

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

JARED BARKLEY,

Plaintiff,

v.

MEDICAL DEPOT, INC., AIRWAY
OXYGEN, HL CORP (USA) and HL CORP
(SHENZHEN),

Defendants.

CAUSE NO.: 1:18-cv-208-HAB-SLC

OPINION AND ORDER

This matter is before the Court on a Stipulation of Dismissal of Medical Depot, Inc. and Airway Oxygen With Prejudice [ECF No. 108], filed on March 17, 2020. The Stipulation indicates that Plaintiff Jared Barkley and Defendants Medical Depot, Inc., and Airway Oxygen have settled this matter. Accordingly, they stipulate to the dismissal with prejudice of this action as to Defendants Medical Depot, Inc., and Airway Oxygen. The Stipulation says nothing about the other two Defendants: HL Corp (USA) and HL Corp (Shenzhen).

The failure to include every party in the stipulation is problematic. Federal Rule of Civil Procedure 41(a) provides the terms upon which a plaintiff can voluntarily dismiss an action. Fed. R. Civ. P. 41(a). The Seventh Circuit has indicated that Rule 41(a) should be used for the limited purpose of dismissing an entire action rather than for dismissal of individual parties or piecemeal claims. *Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015) (“Although some courts have held otherwise, we’ve said that Rule 41(a) does not speak of dismissing one claim in a suit; it speaks of dismissing an action—which is to say, the whole case.”) (first quoting *Berthold Types Ltd. v.*

Adobe Sys. Inc., 242 F.3d 772, 777 (7th Cir. 2001); then citing *Nelson v. Napolitano*, 657 F.3d 586, 588 (7th Cir. 2011)).

According to the Seventh Circuit, Rule 41(a) is not the proper vehicle for dropping individual parties or claims. If Plaintiff desires, instead, to amend his complaint under Federal Rule of Civil Procedure 15(a) to remove Defendants Medical Depot, Inc., and Airway Oxygen from the action, leave is so granted. Currently, this action remains pending as to all parties.

CONCLUSION

For the reasons stated above, the Stipulation of Dismissal [ECF No. 108] has no effect and will be termed as a pending motion on the Court's docket.

SO ORDERED on March 24, 2020.

s/ Holly A. Brady
JUDGE HOLLY A. BRADY
UNITED STATES DISTRICT COURT